

Election / #11
Jr 2/20/02

Atty. Docket No. KIK01 P-319

CERTIFICATE OF MAILING

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October 23, 2001

Date

Deborah A. Witvoet
Deborah A. Witvoet

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner : Anish Gupta
Art Unit : 1653
Applicant : Kimihiro Yamashita
Appln. No. : 09/533,150
Filing Date : March 23, 2000
Confirm. No. : 1126
For : METHOD FOR CONTROLLING ORGANISMS AND MATERIAL THEREFOR, METHOD FOR SELECTIVE ADSORPTION OF PROTEINS AND MATERIAL THEREFOR, CEMENT MATERIAL AND BIOMATERIAL

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BOX NON-FEE AMENDMENT
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

RESPONSE

This communication is in response to the Office Action mailed September 25, 2001.

In response to the restriction requirement, Applicant elects Group I drawn to a method for controlling organisms for further prosecution. This election is made with traverse on grounds that the Examiner has not provided any reasons and/or examples to support a conclusion that Group I drawn to a method for controlling organisms and Group III drawn to a cement material are distinct. The Examiner has only provided reasons to support a conclusion that Groups I and II are distinct. MPEP § 803 (titled "Restriction-When Proper") states that "Examiners must provide reasons and/or examples to support conclusions." In the absence of a reason and/or examples to support the conclusion that Groups I and III are distinct, the restriction is improper. It is respectfully submitted that the Examiner must either examine

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Groups I and III or provide the required reasons and/or examples to support the conclusion that Groups I and III are distinct.

Further, the identification of claims pertaining to the each of the identified Groups is confusing. The Examiner has indicated that Group I drawn to a method for controlling organisms encompasses claims 1-6 and 17-19. At the same time, the Examiner has indicated that Group III drawn to a cement material encompasses claims 11-16 and 19-21. Thus, according to the Examiner claim 19 is encompassed by both Group I and Group II. Applicant is partially responsible for the confusion, in that claim 19 should have been directed to "a material for selective absorption of proteins according to claim 9," rather than "A material for controlling organisms according to claim 9." Further, it should be noted that claims 4-6 and 18 are directed to a material for controlling organisms, not a method for controlling organisms. Nevertheless, the material for controlling organisms (claims 4-6 and 18) are closely related to the method for controlling organisms (claims 1-3 and 17), such that examination of all of these claims in this application would be appropriate. Further, clarification from the Examiner is requested.

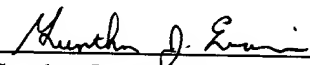
In response to the election of species requirement, Applicant elects for further prosecution the hydroxyapatite ceramic material. It is believed that all of the claims of Group I (1-6, 17 and 18) read on the elected species.

Respectfully submitted,

KIMIHIRO YAMASHITA

By: Price, Heneveld, Cooper,
DeWitt & Litton

October 23, 2001
Date



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